Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
MCI Telecommunications Corporation	)	
	)	RM 9108
Billing and Collection Services Provided	)	
By Local Exchange Carriers for Non-	)	
Subscribed Interexchange Services	)	

REPLY COMMENTS OF U S WEST, INC.

Kathryn Marie Krause
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

Attorney for

U S WEST, INC.

Of Counsel,
Dan L. Poole

August 14, 1997

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
MCI Telecommunications Corporation	)	
	)	RM 9108
Billing and Collection Services Provided	)	
By Local Exchange Carriers for Non-	)	
Subscribed Interexchange Services	)	

REPLY COMMENTS OF U S WEST, INC.

I. INTRODUCTION AND SUMMARY

Reading the comments of those supporting the MCI Telecommunications Corporation ("MCI") Petition for Rulemaking (or "Petition"),[1] makes one feel as if one were engaging with Humpty Dumpty in Alice's world "Through the Looking Glass." There, Mr. Dumpty facilely proclaimed that words "mean[ ] just what I choose [them] to mean – neither more nor less."[2] For Mr. Dumpty, it was unnecessary for words to be used in a manner that was consistent over time or circumstance. The same seems true here.

---

[1] Petition for Rulemaking, filed May 19, 1997. See Public Notice, MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements For Billing And Collection Of Non-Subscribed Services, DA 97-1328, rel. June 25, 1997. Comments were filed July 25, 1997.

[2] The Annotated Alice: Alice's Adventures in Wonderland and Through the Looking Class by Lewis Carroll; Clarkson N. Potter, Inc. Publisher, New York (1960). Quotation from "Through the Looking Glass, Chapter VI, Humpty Dumpty, at p. 269.

The words filed in support of the MCI Petition take full advantage of the Humpty Dumpty approach. MCI claims that it does not really want the Commission to reregulate local exchange carriers' ("LEC") billing and collection services when – of course – it does. Interexchange Carriers ("IXC") make arguments in this proceeding contrary to arguments they made when mandated billing and collection responsibilities were attempted to be foisted on them. And, IXCs that have negotiated contracts with LECs seek to avoid the consequences of the words of those contracts through federal regulatory intervention.

Cloaked in the mantle of the "public interest" and "consumer welfare," IXCs – businesses whose primary market and shareholder objectives are to turn a profit – argue altruistically that their services are, respectively, promotive of universal service goals[3] and important to low income constituencies[4] and to those who suffer network outages.[5] Because of the importance of their services, IXCs argue that 10XXX services or other non-subscribed calls, including calls to information services such as 900 offerings (also called "dial-around" or "casual calling")[6] should continue

---

[3] Digital Network Services, Inc. ("DNSI") at 3; WorldCom, Inc. ("WorldCom") at 3.

[4] AT&T Corp. ("AT&T") at 1-2; Cable & Wireless, Inc. ("CWI") at 2-3; DNSI at 3; WorldCom at 3. Contra Ameritech at 4 (noting that low income customers could also make casual calls utilizing prepaid calling cards which do not rely on LEC billing).

[5] Sprint Communications Company L.P. ("Sprint") at 2. As Ameritech notes, it is probable that those customers who are aware of the dial around capability in a network outage situation are rare. Ameritech at 4.

[6] Commentors such as VarTec Telecom, Inc. and CommuniGroup of KC, Inc. ("VarTec") and CWI refer to the calls in question as "dial-around" calls. Vartec at 2-3; CWI at 1. The Southern New England Telephone Company ("SNET") refers to them as "casual billing." SNET at 2.

to be widely available, even though the companies that offer them are either incapable or unwilling to bill for them.

The above are quite amazing claims, especially for companies who – when they themselves were challenged to provide billing and collection services for providers who experienced casual and episodic calling patterns – argued "that the only bottleneck that would limit competition is access to [Billing Name and Address] BNA."[7] As aptly stated by one court reviewing demands being made by competitors for advantages enjoyed by a large firm, the arguments pressed in support of the MCI Petition take on aspects of an aggressive disinformation or revisionist history campaign. It makes one feel as if one had "ventured through the looking glass."[8]

There should be no mistake about the driver behind the MCI Petition. It is not that LECs have essential facilities to which others have a legally *bona fide* claim for access.[9] It is not that LECs in droves have informed MCI or other IXCs that billing for 10XXX or other casual calls will cease.[10] And, it is not that Bell

---

[7] See further In the Matter of Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, Memorandum Opinion and Order, 8 FCC Rcd. 8697, 8699 ¶ 16 (1993) ("Sprint 900 Declaratory Ruling Order") (quoting from MCI's comments).

[8] Grason Elec. v. Sacramento Municipal Utility Dist., 571 F. Supp. 1504, 1512-13 (E.D.Cal. 1983).

[9] The undemonstrated argument is pressed by Pilgrim Telephone, Inc. ("Pilgrim"), DNSI and PhoneTime Inc. ("PTI"), as well as inferentially by others, as discussed more below in Section III.

[10] Indeed, a number of commenting LECs note the lack of factual specifics associated with MCI's claim that a jeopardy situation exists with respect to LEC billing for

Operating Companies ("BOC") are billing on behalf of their Section 272 affiliates in a discriminatory manner, because – as SBC indicates[11] – if the affiliate is operating in its capacity as a Section 272 affiliate, that statutory section itself would provide the foundation for relief with respect to discriminatory billing and no rulemaking would be required.[12]

Rather, the primary driver behind the MCI Petition and those commentors supporting it is the desire of MCI and other IXCs to bill only for those calls they want to bill for (e.g., those that have the most volume and the most intense relational component with end users) and not to bill for those they do not want to bill for.[13] Specifically, while IXCs extol the virtues of casual calling, as it allows

---

casual calling. See, e.g., SNET at 5-6, 10. Some even make clear that they have no current intention to cease such billing (see, e.g., Ameritech at 1) or that they provide BNA even for 10XXX traffic (see SBC Communications Inc. ("SBC") at 14).

[11] SBC at 7, 16-17.

[12] Section 271(c)(1) imposes a nondiscriminatory requirement *vis-a-vis* services that a BOC provides to its Section 272 affiliate. To the extent that the BOC, in fact, bills for types of casual calls for its Section 272 affiliate, then a nondiscrimination obligation exists. To the extent it does not bill for certain types of casual calls, no statutory nondiscrimination obligation exists. See AT&T at 9 (noting that if a BOC/LEC did a certain type of billing at the same rate for an affiliate as for third parties, there would be no discrimination). Thus, those that attempt to bootstrap their mandated billing arguments on the shoulders of the billing arrangement between a BOC and its Section 272 affiliate fail in their efforts because the precise parameters of those billing arrangements are not yet known. See SBC at 16-17.

[13] A number of commentors note the "selective" nature of the IXC demand for billing, particularly as those carriers self-source their billing or take it back for certain types of services. See, e.g., Ameritech at 5 (MCI has long submitted a separate bill to certain types of customers); SBC at 3, 4, 8-9 and n.13, Attachment 1 (noting that MCI bills commercial customers separately and is preparing to self-source its billing for its presubscribed traffic); SNET at 7-8 (noting that IXCs are not even billing for all of their presubscribed traffic, especially low-volume customers). And compare

customers to experiment with different providers, to engage in low volume calling, and to reach others in critical situations – all benefits which the IXCs market and capitalize on and which make the provision of such services lucrative to so many different IXCs – they simultaneously complain about the very same product characteristics.[14] In short, IXCs do not want to assume the responsibility for billing for their own service creations – the existence of "occasional and episodic" traffic.[15] This avoidance of responsibility is suggested as being, variously, temporary or perhaps more or less permanent.[16]

AT&T at 3 (noting that a carrier might well want to bill for its own presubscribed customers but want others to bill for their casual calling traffic).

Clearly, MCI and other IXCs simply do not want to invest their moneys in a manner that will reduce the margins associated with the casual calling offerings they created and (often) market aggressively. Accord Ameritech at 4; SBC at 5-6.

[14] See, e.g., Telco Communications Group, Inc. ("Telco") at 10 ("A customer may use one or more IXCs for their long distance calling using 10XXX access, they may use 1-800-Collect (MCI) OR 1-800-Call-ATT (AT&T) for some collect calling or use third party billing for other calls. As a result, one customer may use two, three or even ten long distance providers in a one month period, making only one or two calls on a particular IXC network during a particular billing period."). Compare Excel Communications Inc. ("Excel") at 10 (virtually identical quotation).

[15] AT&T at 2 (characterizing the traffic in these terms).

[16] Some commentors, such as the Competitive Telecommunications Association ("CompTel") (at 6-7) suggest that the MCI solution really is only temporary because, "[i]n the long run, long-distance carriers will not want to leave billing and collection for any of their services in the hands of their actual or potential competitors[,]" and will want the "ability to bill on an integrated basis" so as to realize the value of "one stop shopping packages." Other commentors, however, suggest that the "solution" being proposed by MCI might well extend into some type of indefinite future. See, e.g., Pilgrim at 2; Telecommunications Resellers Association at 7. Thus, IXCs want LEC billing for as long as they want it and no longer than they want it. But, they would take issue with the LECs who demand the same flexibility, perhaps for different but for no less articulate business reasons, as discussed more below in Section IV.

The Commission should decline to initiate a rulemaking in this proceeding. LECs should not be required, in the absence of a business decision to offer third-party billing services or a mandate to conform with nondiscrimination obligations of Section 271(c)(1),[17] to perform billing for other companies, especially other companies that are potential or actual competitors.

Furthermore, the arguments of those who maintain – contrary to all regulatory and judicial precedent – that LEC billing services constitute essential facilities are simply legally and logically in error and should be dismissed.[18] The filed comments themselves demonstrate that IXCs are increasingly engaging in self-

---

[17] Section 271 applies only to BOCs, not to all LECs. And, as DNSI notes, the Consent Decrees that previously framed certain nondiscriminatory billing obligations for the BOCs and GTE are gone. DNSI at 5-6. The fact that, with the cessation of the Consent Decrees, Congress did not determine it necessary or appropriate to mandate the provision of billing services, except in the limited case of imposing a nondiscrimination obligation on the BOCs, is strong evidence that federal legislative intent is that such services not be compelled. This intention is all the more obvious in light of the fact that all incumbent LECs have an obligation to provide to other telecommunications carriers as a network element information necessary to bill. See 47 U.S.C. §§ 251(c)(3) and 153(29). Given this specific Congressional mandate, it is obvious that Congress did not intend for billing and collection services to be classified as network elements. See SBC at 16. But see Telco at 7, 8 (suggesting the Commission declare billing and collection services to be network elements).

As discussed more fully below in Section V, because carriers need BNA to even bill on their own behalf with respect to certain types of calls (see In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, 8 FCC Rcd. 4478 at ¶ 1 (1993) ("BNA Order")), at most the Commission should address the provision of BNA by all LECs (incumbent or not). The provision of billing and collection services should not be a component of any Commission rulemaking.

[18] WorldCom makes the bizarre argument that casual calling services should not be impeded by "artificial constraints" (WorldCom at 3), where the referenced "constraint" is – apparently – a requirement that a carrier either bill for its own services or negotiate satisfactory billing arrangements.

sourcing of their billing.[19] That self-sourcing, in and of itself, demonstrates a level of competition regarding the billing of interexchange services.[20]

IXCs should not be permitted to craft their business plans and strategies around billing for those services they like and not billing for those they don't like – at least if they have to bill for them. The interexchange services in question, which were "capitalized on" by IXCs[21] and "represent a large, vibrant segment of the total telecommunications market,"[22] cannot be allowed to rely on the forced labor of others as a "key prerequisite"[23] to their existence. As aptly stated by BellSouth, LECs should not be expected to underwrite the non-presubscribed services offered by IXCs.[24]

---

[19] See, e.g., Ameritech at 5; SBC at 8-9 and Attachments 1 and 2.

[20] In the Matter of Detariffing of Billing and Collection Services, Report and Order, 102 F.C.C.2d 1150, 1170 ¶ 37 (1986). The fact that a company may make a business decision not to self-source, or not to do so along a time-line originally determined but later changed for business or regulatory reasons (see AT&T at 6 (noting that the Commission disallowed certain of its billing and collection expenses); CompTel at 4, noting AT&T's billing take-back decisions did not track with the Commission's original predictions), is no reason to find that self-sourcing is not at all times a potential alternative. Furthermore, LECs should obviously not be required to "pay" for a Commission accounting decision pertaining only to AT&T and its service offerings.

[21] VarTec at 2, 3.

[22] WorldCom at 2-3. And see CWI at 3 (noting the vibrancy of these service offerings); AT&T at 1 ("vital segment of the interexchange market"); CompTel at 4 (stating that dial-around services "have taken as much as 2.5 percent of the $80 **billion** long distance market in just two years" (emphasis added)).

[23] WorldCom at 3.

[24] BellSouth Corporation ("BellSouth") at 3. See also Ameritech at 4, 6 (LECs should not be required to subsidize unprofitable interexchange services); SBC at 4-5. And see VarTec at 4 (arguing that LEC billing is necessary for a reasonable level of profitability in the provision of dial-around services).

II. THE CHARACTERISTICS OF IXC CASUAL CALLING TRAFFIC IS NO DIFFERENT FROM OTHER TYPES OF TRAFFIC REGARDING WHICH THE COMMISSION HAS DECLINED TO MANDATE THIRD-PARTY BILLING

IXCs want to be treated in a manner superior to the treatment received by other service providers, such as certain enhanced service providers ("ESP") and 900 service providers. These latter types of providers often deal with similar episodic traffic and have made arguments virtually identical to those raised by MCI in its Petition in their own entreaties to secure mandated carrier billing for their product offerings.[25] It is not atypical for such occasional or sporadic transactions (whether they be telecommunications or information services) to involve low volumes in terms of both number of transactions and charges incurred, as well as expose service providers to higher risks of non-collection.[26]

There is nothing "special" about IXC traffic that entitles it to greater accommodation than the services of other providers. To the extent that the provision of a service, if billed for by the provider or through a designated billing agent, would "lose money,"[27] then rational economic theory suggests that a product redefinition would be expected to occur.[28]

---

[25] U S WEST at 5 n.19. See further, Sprint 900 Declaratory Ruling Order, 8 FCC Rcd. at 8699 ¶ 14 (where the Commission identifies arguments virtually identical to those being made by IXCs in response to the MCI Petition, including the "promising" – but then nascent – third-party billing company).

[26] AT&T at 2.

[27] Id.

[28] Given that 10XXX traffic avoids certain charges being paid for by the carrier (i.e., primary interexchange carrier ("PIC") charges associated with presubscribed

III. LECS' BILLING AND COLLECTION SERVICES ARE NOT ESSENTIAL FACILITIES

As is all too often the case in pleading practice before the Commission, commentors argue – erroneously – that LECs maintain an offering or a capability that constitutes an essential facility. In this case, it is the billing and collection capabilities of the LECs. Such arguments generally misapply existing law in the area of essential facilities. They most certainly ignore both past regulatory and judicial precedent.

Commentors that press the argument that LEC billing and collection services are "essential" and that, therefore, a refusal to provide them would constitute a violation of Section 2 of the Sherman Act (15 U.S.C. Section 2) overreach with respect to the law in this area. Monopolization, through refusal to provide reasonable access to an "essential facility," requires demonstration of the following elements:

- control of the essential facility by a monopolist;
- a competitor's inability practically or reasonably to duplicate the essential facility;
- denial of the use of the facility to the competitor; and
- feasibility of providing the facility.[29]

---

traffic), there are obvious cost savings already being realized by service providers focusing on this type of product offering. Coupled with the establishment of a surcharge (which, apparently, is already being put in place by some carriers (see SNET at 6)), the combination might well render this traffic profitable over time even with higher LEC billing and collection charges or the establishment of internal billing capabilities.

[29] MCI Communications Corp. v. AT&T, 708 F.2d 1081, 1132-3 (7th Cir.), cert. denied, 464 U.S. 891 (1983).

Commentors who make the essential facility argument cannot even make a convincing offer of proof with respect to the first element. Generally a facility is "essential" if it is necessary to competitive success and competitors cannot effectively compete in the relevant market without access to it. In light of the comments describing casual calling as vibrant,[30] and given existing alternatives, billing and collection services by LECs cannot be considered "essential."

Alternatives currently exist to LEC billing and collection even in the area of 10XXX billing. For example, pre-paid calling cards and billing by the IXCs themselves or through agents are obvious examples. In this regard, no provider of service should be allowed to argue that it can provide a service but is incapable of billing for the service rendered. Thus, self-sourcing will always provide a competitive alternative to demanding the billing capabilities of another.[31]

Second, those who complain about the cost of billing for casual traffic fail to meet the second element, i.e., the inability practically or reasonably to duplicate the essential facility. It is well understood under antitrust law that access to a "facility" that is simply "more economical" than another is not sufficient to prove monopolization.[32] Having failed to present even a colorable claim of either

---

[30] See note 22 supra.

[31] Whether billing for one's own service can be considered somehow to be a service separate from the underlying service, and also be "essential" but not capable of being provided by the underlying service provider, is highly unlikely.

[32] Flip Side Prods. v. Jam Prods., 843 F.2d 1024, 1033-34 (7th Cir.), cert. denied, 488 U.S. 909 (1988).

essentiality or monopolization, commentors seeking access to LEC billing completely undermine their own credibility by pressing such arguments.

Finally, those commentors that attempt to take the MCI Petition even beyond general telephony non-subscribed services to all telecommunications services (including presubscribed services) (such as PTI and Consolidated)[33] or to all casual calling services, regardless of "content" (such as Pilgrim[34] and ISA[35]), ignore specific and articulate Commission and judicial precedent to the contrary.[36]

---

[33] See PTI and Consolidated Communications Telecom Services Inc. ("Consolidated"), generally; Clearinghouses at 8-10; Excel at 1, 12-13; Hold Billing Services, Ltd. ("HBS") at 4, 9; Telco at 13-14.

[34] Pilgrim's requests for billing and collection services are extensive, clearly extending beyond those raised by MCI. See Pilgrim at 2, 6-7 and n.6. However, both parties (Pilgrim and Interactive Services Association ("ISA")) request relief regarding 900 billing.

[35] ISA at 3.

[36] Regarding telecommunications services, see In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Notice of Proposed Rule Making, 6 FCC Rcd. 3506, 3509 ¶ 24 (1991) ("Notice of Proposed Rule Making"), appeal denied, Capital Network Systems, Inc. v. FCC, 3 F.3d 1526 (D.C. Cir. 1993); Report and Order and Request for Supplemental Comment, 7 FCC Rcd. 3528, 3533 n.50 (1992),. Regarding information/enhanced services, In the Matter of Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order, 4 FCC Rcd. 1, 58-59 ¶¶ 108-109 (1988) ("BOC ONA Order"); Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd. 3084, 3088 ¶ 33 (1990) ("BOC ONA Reconsideration Order"). Regarding 900 services specifically, see Sprint 900 Declaratory Ruling Order, 8 FCC Rcd. at 8699 ¶ 18 (noting that competition for billing services for 900 offerings was open to even greater potential competition than billing for interexchange services), as referenced by Bell Atlantic/NYNEX at 4; Carlin Communications v. The Mountain States Telephone and Telegraph Company, 827 F.2d 1291 (9th Cir. 1987), cert. denied, 485 U.S. 1029 (1988) ("Carlin Case").

IV. THERE ARE VALID, REASONABLE BUSINESS REASONS WHY A LEC MIGHT CEASE THE PROVISION OF BILLING AND COLLECTION SERVICES OR SEEK TO INCLUDE CERTAIN CONTRACTUAL PROVISIONS PERTAINING TO SUCH SERVICES

MCI, when fighting off a challenge that IXCs be required to bill for the casual, episodic calls of 900 providers, correctly observed that "if reasonable criteria are developed for determining whether billing and collection will be provided, and they are applied equally and in a non-discriminatory manner, there would be no violation of the [Communications] Act."[37] MCI was correct when it made the statement, and the statement remains correct now.

Cincinnati Bell Telephone ("CBT") is also correct in its observation that "[t]here are various valid business reasons why a LEC might or might not choose to provide billing and collection services to any carrier[.]"[38] And, as CBT correctly notes, a LEC's "most important relationship is with its local exchange customers, and its most important asset is its good name and reputation in its dealing with those customers."[39]

This necessarily means that a LEC must retain the ability to determine those businesses with which it will associate in its bill (assuming compliance with any other independent nondiscrimination obligation, such as a Section 271 obligation)

---

[37] Sprint 900 Declaratory Ruling Order, 8 FCC Rcd. at 8701 ¶ 28 (Commission citing to MCI's comments).

[38] CBT at 2.

[39] Id. at 3.

and whether or not billing for others advances its relationships or retards them.[40] It also means that a LEC who determines to provide billing and collection services must be able to craft those services along lines that make business sense to the LEC and that ensure the profitability of the offering. If billing for third parties does not make business sense, or if it is not profitable to the extent deemed appropriate, LECs certainly should be permitted to refashion the contractual relationship or withdraw from the offering.

A. Operational Considerations

Third-party billing frequently results in a LEC being placed in the "middle," between an IXC and the IXC's customers, even in those circumstances where the IXC provides its own Inquiry function. That is because IXCs' customers often call the LEC first to inquire about or complain about items on the LEC-produced and mailed bill.[41] In such a communication, the LEC is often put in the position of trying to explain to the calling customer (i.e., very often the LEC's own customer for

---

[40] For example, CompTel acknowledges that competitors would not naturally want to be in the same billing envelope. CompTel at 6-7. And, in other contexts, other IXCs have suggested the awkwardness of such associations. In commenting on the issues ultimately addressed by the Commission in its Second Report and Order, AT&T argued that "'continued use of the incumbent LEC's own brand with services that are resold to CLEC customers would stifle competition and confuse customers.'" In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al., Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392, 19454 ¶ 126 (1996) (where the Commission quotes from AT&T's comments). Obviously, forced associations between competitors are not generally comfortable for either or both of the participants to the association.

[41] See Sprint 900 Declaratory Ruling Order, 8 FCC Rcd. at 8702 ¶ 35 (noting that empirical evidence demonstrates that customers do associate the supplier of billing services with the messages and billing transaction material included in the bill).

local services) about the separation between the LEC and another carrier (including that carrier's service offerings and billing practices) or of trying to direct the calling customer to another carrier to resolve whatever might be the outstanding issue of the moment.

But the fragility of the LEC/customer communication is severely compromised even in the best of circumstances by the passage of "inappropriate, incorrect, inaccurate, or unlawful billing messages" to a LEC by an IXC.[42] The customer contact is then complicated by the need to ensure quality and professional responses to the affected customer – again, one shared by two carriers. To the extent an IXC does not respond to these customer service issues in a timely and accommodating manner, lingering customer irritation affects not only that IXC's relationship with the customer but the LEC's, as well.

The "middleman" conundrum becomes all the more obvious and precarious, however, where the LEC provides the full Inquiry function for the IXC[43] – such as is the case with much of the casual calling traffic (with the exception of 900 calls, where the Inquiry function is generally done by the IXC itself). There, the LEC is

---

[42] CBT at 3.

[43] SNET at 9. While performance of the Inquiry function might well require some additional energy and expertise, it is not impossible to provide. Thus, a LEC might – in fact – require that it be able to provide the Inquiry function with respect to any given type of call before it agrees to bill for that particular type of call, particularly if the price set for the Inquiry function would offset some increased costs associated with the type of call in other areas (such as collections). Compare Clearinghouses at 6 (suggesting that a LEC would be acting improperly were it to require that it be able to do Inquiry before agreeing to do billing for a particular type of call).

acting as "the agent" for the IXC – a relationship that can be quite confusing to a customer at times, particularly if not handled adroitly.

Furthermore, to the extent that the volume of casual calling increases, which is clearly happening,[44] thanks in large part to the aggressive marketing campaigns of the IXCs, a LEC can find itself engaging in an unanticipated number of Inquiry calls. Given past casual calling volumes, existing contracts might not reflect the kinds of contractual provisions necessary to address the associated increased costs of handling the calls[45] or the customer confusion attendant to the billing itself.

With respect especially to casual calling billing, virtually all customer frustration with the IXCs for whom the LEC bills is vented to the LEC entity. The ability of the customer to disassociate the LEC "as IXC agent" from the LEC "as my local service provider" is not always evident. And, this customer confusion will only increase as businesses that, heretofore, were separate but were often considered by customers to be somehow joint or aligned (i.e., local service providers and IXCs) actually seek to provide – as separate entities – services that are aligned through a single entity (one-stop shopping).

---

[44] See, e.g., SNET at 8, noting such an increase. See also SBC at 8-9 (noting that its presubscribed billing for MCI is decreasing even as its MCI-proffered casual calling traffic is increasing).

[45] See, e.g., SNET at 9 (noting that increased casual calling results in additional costs, including increased customer contacts (some of which involved customer education on behalf of the IXC); increased uncollectibles; increased service representative time involved in investigations and administrative recourse activity).

B. Contractual Considerations

Finally, to the extent that the current and existing billing and collection contracts between IXCs and LECs permit the cancellation or termination of the contract, upon the following of certain procedures, as well as the propositioning of additional or new terms and conditions, the Commission should not be persuaded by IXC protestations that a party's exercise of its contractual rights amounts to some kind of unreasonable conduct.[46] Furthermore, the Commission should clearly be skeptical of arguments made by only one party to a contract, particularly when those arguments are based on a portion of a contract or a paragraph of an integrated, totally negotiated or negotiable, agreement.

The current structure of and prices for LEC billing and collection services are based on the inclusion of specific terms and conditions, as well as the exclusion of other terms. The contracts are documents-as-a-whole, not isolated provisions. It is

[46] This is the clear suggestion of Frontier at 2, Sprint at 3-4, WorldCom at 4; as it was of MCI in its Petition. MCI Petition at 2, 14-15. It is certainly not difficult, for example, for a dissatisfied party to a negotiation to characterize the negotiation in less favorable terms than the party that secured the desired contractual provision. Thus, it is not surprising that one party to the negotiation might characterize a negotiating position of another party as having been a "take it or leave it" position. See, e.g., id. at 14; Frontier at 2. While such might actually be the case (many other contractual provisions forming a part of the fabric associated with such a position with respect to a single item), it also may not be. The Commission should be wary of such characterizations in the absence of a full factual record.

Furthermore, it is not entirely clear what Frontier complains about with respect to the "Complaint Reduction Program" contractual provision referenced in its filing since, based on Frontier's representation, it will not be affected by the provision, in any event (given its lack of complaints). See Frontier at 2. And see reference to GTE's "excessive complaint surcharge" provision. Clearinghouses at 6; HBS at 7.

the entire contract, including the ease of termination and the ability to initiate a renegotiation, that forms the foundation for the monetary exchanges of consideration.

Some of those contracts involve volume requirements and pricing,[47] some service-type pricing, some absolute terms, some termination-at-will terms. No particular contractual provision is *per se* pernicious. For example, as SBC has demonstrated, there are sound business reasons for a billing business to impose volume requirements, not the least of which is that the business may offer no appeal absent a certain volume level; or the particulars of pricing for the service may be averaged across different types of calls or messages, so that price averaging occurs.[48] Having negotiated these agreements, IXCs should not now be permitted to request the Commission's intercession to absolve them from the commercial business risks attendant to their prior negotiations.

C. First Amendment Speech and Associational Considerations

CBT correctly notes that there are certain First Amendment considerations that must educate any regulation in the area of LEC-provided billing services.[49] For example, in the area of 900 services, no LEC should be compelled to bill for services where the content is objectionable to it or the resulting consumer complaints would

[47] Some IXCs, like AT&T (at 3) argue that volume requirements are inappropriate, yet easily met by a Section 272 affiliate. However, so long as there is no discrimination, the statutory requirement is met.

[48] See SBC at 6-8 (noting that it does not differentiate between PIC'd and non-PIC'd billing in its pricing, averaging the volume out into a single price – a price that would not be appropriate, absent the volume and averaging).

[49] CBT at 5-6.

engage the LEC in an association which it finds odious. The same is true with respect to communications from third parties that involve contests[50] or that might otherwise result in high levels of complaints.[51] The law is well established that even a public utility company can put limits on the type of content with which it will associate, provided the action is not arbitrary and is based on reasonable business or policy considerations.[52]

V. COMMISSION ACTION MIGHT BE NEEDED TO EXPAND THE CURRENT BNA RULE TO APPLY TO ALL TELECOMMUNICATIONS SERVICES

If any Commission action is needed in the area of billing capabilities, it may be that a further rulemaking regarding the provisioning of BNA by all LECs – including CLECs – extending even to casual calling, is necessary.[53] Apparently, this latter class of LEC, not traditionally having provided BNA, may not be providing this information.[54] And, it is clear that the Commission's most recent BNA

---

[50] Compare HBS at 6-7 (arguing that a LEC has no right to refuse to carry such promotions). But see note 41 supra. (noting the linkage between the entity that does the billing and customer complaints).

[51] Compare Frontier at 2 (taking issue with "customer complaint reduction" programs. But see Sprint 900 Declaratory Ruling Order, 8 FCC Rcd. at 8697 ¶¶ 5-6 (noting that Sprint had complaints, which it tried to reduce repeatedly), 8702 ¶ 34 (noting that it was not unreasonable for Sprint to respond to customer complaints through the adoption of remedial business practices).

[52] Carlin Case, 827 F.2d at 1294; Sprint 900 Declaratory Ruling Order, generally.

[53] In the BOC ONA Amendment Order, 5 FCC Rcd. 3101 ¶ 32 and n.59 (1990), the Commission held that BNA was sufficient to allow ESPs to bill for casual callers. See also BOC ONA Reconsideration Order, 5 FCC Rcd. at 3088 n.83 (enhanced services); Notice of Proposed Rule Making, 6 FCC Rcd. at 3509 ¶ 23 (telecommunications services).

[54] See, e.g., Sprint at 3 n.1, Telco at 8, VarTec at 6. See also AmericaTel at 6 n.13. Because the unbundling requirements of the Telecommunications Act of 1996

provisioning mandates did not compel the production of BNA with respect to 10XXX calling. Thus, a further rulemaking would be necessary to determine the propriety of such a mandate.[55]

Even some commentors supporting the MCI Petition acknowledge that the provision of BNA in conjunction with casual calling would factually be sufficient to correct whatever problem currently exists.[56] It seems reasonable that all LECs should provide BNA upon request regarding all calls that traverse their networks, to the extent a case can be made that such information is necessary for others to bill for themselves or on behalf of other carriers.

---

require only that incumbent LECs provide information necessary to bill to third parties (Section I supra), CLECs escape this statutory obligation. Thus, a regulatory mandate might be in order.

[55] As far back as 1986, the Commission acknowledged that, should LECs decline to make BNA available under reasonable terms and conditions, regulatory intervention might be necessary. Detariffing of Billing and Collection Services, Memorandum Opinion and Order, 1 FCC Rcd. 445, 446 ¶ 13. And, certain commentors support the notion that all LECs, incumbent or not, should be required to provide BNA. See, e.g., SBC at 14. Any requirement in this area would need to come through a rulemaking, as opposed to a "declaration" such as was requested by ACTA. See America's Carriers Telecommunication Association Petition for Declaratory Ruling, filed Jan. 17, 1997 ("ACTA Petition").

[56] See, e.g., VarTec at 3 (noting that dial-around companies require "access to casual customer billing information"), 4 (dial-around companies "rely on the ILECs . . . to provide the most current and accurate casual customer billing information"), 5 (VarTec would have to cease offering some casual calling options if ILECs "refuse[d] to provide the customer billing information"), 6 (dial-around companies "will be severely disadvantaged unless the companies can have access to customer billing information," "access to casual customer billing information is critical"); AmericaTel at 2 (expressing concern that LECs "may be planning to curtail or cease their provision to IXCs and third party billing companies of information sufficient for billing and collection purposes"), 3 (BNA is required to support the provision of non-subscribed services), 6 n.13 (the Commission should impose a mandatory BNA-provisioning obligation on CLECs). Compare DNSI at 8-9.

VI. CONCLUSION

For all of the above reasons, the MCI Petition should be rejected and dismissed. Neither MCI, nor any party supporting its Petition, make a credible case in support of the relief which MCI requests. And, to the extent some commenting parties seek to expand the MCI requests for relief, the expansions are entirely inappropriate given existing regulatory and judicial precedent.

No commercial entity should be permitted to aggressively introduce new products and services without making appropriate provisions for the billing of such services. In some cases, those "appropriate provisions" might involve billing on one's own behalf. In other circumstances, "appropriate provisions" involve contracting with others to do the billing.

To the extent a business takes the latter approach, subject to negotiated contracts, that business must assume the risks and consequences attendant to that business decision. As a matter of general commercial practice, contracts are generally terminable at some time and involve renegotiation. Absent a successful negotiation, businesses often part ways.

Those favoring the grant of MCI's Petition generally seek to avoid the consequences of routine commercial transactions and business decision-making. Under the misguided advocacy of "essential facility" law, those parties seek to insulate themselves from their failure to establish their own workable billing systems and seek to foist on others the obligation to perform a necessary function

associated with any provision of service – the responsibility to be able to bill and collect for the service rendered.

The Commission should reject their undemonstrated rhetoric. It should reiterate the correctness of its long-standing legal and policy position on third-party billing and collections, i.e., that such services are competitive, that carriers can provide them themselves, and that no federal intervention with respect to such offerings is necessary.

Should any federal intervention be necessary with regards to service provisioning and billing, it may be in the area of the provision of BNA. If the Commission deems it necessary, a limited rulemaking might be appropriately commenced to address the need for further rules in this area.

Respectfully submitted,

U S WEST, INC.

By: Kathryn Marie Krause

Kathryn Marie Krause
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

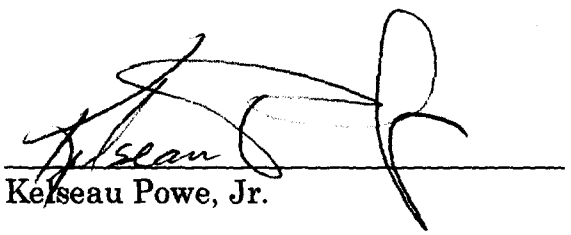
Its Attorney

Of Counsel,
Dan L. Poole

August 14, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 14th day of August 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

***Via Hand-Delivery**

(RM9108.COS/KK/ss)
Last Update 8/14/97

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Regina M. Keeney
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*William E. Kennard
Federal Communications Commission
Room 614
1919 M Street, N.W.
Washington, DC 20554

*Darius B. Withers
Federal Communications Commission
Room 6120
2025 M Street, N.W.
Washington, DC 20554

(Including a 3x5 diskette w/cover letter)

*International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Thomas E. Taylor
Cincinnati Bell Telephone Company
6th Floor
201 East 4th Street
Cincinnati, OH 45202

Mary L. Brown
Donna M. Roberts
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006